IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 367 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DADABHAI SAKHARAM SONVANE

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR. K.G.SHETH,Learned APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/09/2000

C.A.V.JUDGEMENT

1. The petitioner abovenamed has preferred this petition before this Court under Articles 14, 226 and 227

of the Constitution of India challenging the order dated 16.8.1999 passed by the Deputy Commissioner of Police, North Zone, Surat City under Section 56 of the Bombay Police At, 1951 in Externment Case No. 44 of 1998 under which the petitioner was directed to furnish security and PR in the sum of Rs. 20,000/- to show good conduct for a period of 2 years from the date of the said order. The said order was carried in Appeal and the second respondent heard the said appeal of the petitioner and dismissed the same by an order dated 20.4.2000.

2. The said two orders have been challenged by the petitioner in this petition on several grounds. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appeared for State. I have heard the learned advocates for the parties and perused the papers.

3. It has been contended on behalf of the petitioner that the petitioner has examined so many witnesses before the Deputy Commissioner of Police and that the evidence of those witnesses has not at all been considered by the Deputy Commissioner of Police which clearly shows non-application of mind while passing the aforesaid orders. For that purpose we can consider the order dated 8.1.1999 at Annexure-D at page-33 which simply shows that the evidence in support of the allegations and evidence produced for defence was referred and thereafter, the authority was of the opinion that the petitioner was required to be given an opportunity to show improvement in his conduct. Their names have not been stated in the order and the evidence given by them has also not been stated in the order. It is not stated as to whether the Deputy Commissioner of Police accepted the versions given by those witnesses or he was not agreeable to accept the versions of the said witnesses. That clearly shows that the Deputy Commissioner of Police did not consider the evidence of the said witnesses to any extent. When the material was placed before the authority and if that material is totally over looked and ignored it can be said that the orders have been passed without considering the same which would amount to an order passed without application of mind.

4. Similar is position with respect to the order of the second respondent who has disposed of the said appeal of the petitioner on 20.8.2000. There also the said authority did not refer to the evidence tendered by the petitioner. In the aforesaid view of the matter, it is very clear that both the authorities have not considered the evidence of those witnesses tendered by the

petitioner and, therefore, the said two orders can be said to be the orders suffering from material infirmity of non-application of mind.

5. In the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat and Ors. reported in 1999(2) GLH 786. It has been observed that after the cause is shown and defence is tendered by proposed externee, same is bound to be considered objectively by externing as well as appellate authority. That in case evidence is adduced by either side, it should be objectively considered and reasons should be given as to why such evidence is to be believed or not. That if this is not done then violation of procedural safeguards would render the order invalid.

6. In orders of two authorities suffer from same infirmity of non-application of mind with respect to material on record, ultimately orders cannot be sustained and, therefore, it is required to be quashed and set aside. In the aforesaid view of the matter, this petition is allowed and the orders passed by the Deputy Commissioner of Police on 16.8.1999 and the order dated 20.4.2000 passed by the second respondent in Appeal are quahsed and set aside. Rule made absolute. Direct service is permitted for respondent no.1.

(D.P.Buch,J)

(vipul)